

Comptroller of the Currency, Treasury

§ 3.607

effective and outstanding cease and desist order which has become final as defined in 12 U.S.C. 1818(k). Violation of a directive may result in assessment of civil money penalties in accordance with 12 U.S.C. 3909(d).

§ 3.602 Notice of intent to issue a directive.

The OCC will notify a national bank or Federal savings association in writing of its intention to issue a directive. The notice will state:

- (a) Reasons for issuance of the directive; and
- (b) The proposed contents of the directive.

§ 3.603 Response to notice.

(a) A national bank or Federal savings association may respond to the notice by stating why a directive should not be issued and/or by proposing alternative contents for the directive. The response should include any matters which the national bank or Federal savings association would have the OCC consider in deciding whether to issue a directive and/or what the contents of the directive should be. The response may include a plan for achieving the minimum capital ratios applicable to the national bank or Federal savings association. The response must be in writing and delivered to the designated OCC official within 30 days after the date on which the national bank or Federal savings association received the notice. The OCC may shorten the 30-day time period:

- (1) When, in the opinion of the OCC, the condition of the national bank or Federal savings association so requires, provided that the national bank or Federal savings association shall be informed promptly of the new time period;
 - (2) With the consent of the national bank or Federal savings association; or
 - (3) When the national bank or Federal savings association already has advised the OCC that it cannot or will not achieve its applicable minimum capital ratios.
- (b) In its discretion, the OCC may extend the time period for good cause.
- (c) Failure to respond within 30 days or such other time period as may be

specified by the OCC shall constitute a waiver of any objections to the proposed directive.

§ 3.604 Decision.

After the closing date of the national bank's or Federal savings association's response period, or receipt of the national bank's or Federal savings association's response, if earlier, the OCC will consider the national bank's or Federal savings association's response, and may seek additional information or clarification of the response. Thereafter, the OCC will determine whether or not to issue a directive, and if one is to be issued, whether it should be as originally proposed or in modified form.

§ 3.605 Issuance of a directive.

- (a) A directive will be served by delivery to the national bank or Federal savings association. It will include or be accompanied by a statement of reasons for its issuance.
- (b) A directive is effective immediately upon its receipt by the national bank or Federal savings association, or upon such later date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, or terminated by the OCC.

§ 3.606 Change in circumstances.

Upon a change in circumstances, a national bank or Federal savings association may request the OCC to reconsider the terms of its directive or may propose changes in the plan to achieve the national bank's or Federal savings association's applicable minimum capital ratios. The OCC also may take such action on its own motion. The OCC may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the directive and plan shall continue in full force and effect.

§ 3.607 Relation to other administrative actions.

A directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings, civil money penalties, or the conditioning or denial of